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EXAMINER

MCCLELLAN, JAMES S

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 10/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/487,719

Applicant(s)

GODDARD, OPHER

Examiner

James S McClellan

Art Unit

3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-101 and 103-106 is/are pending in the application.
- 4a) Of the above claim(s) 2,4,21-35 and 51-90 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1,5-20,36-50,91-101 and 103-106 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Request for Continued Examination***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 2, 2003 has been entered.

### ***Amendment***

2. Applicant's submittal of an amendment was entered on October 2, 2003, wherein:

- claims 1, 2, 4-101, and 103-106 are pending;
- claims 2, 4, 21-35, and 51-90 have been withdrawn;
- claims 2 and 102 have been canceled;
- claims 1, 8, 9, 11, 14-18, 36, 38-41, 44-48, 94-97 have been amended; and
- claims 104-106 have been added.

### ***Claim Objections***

3. Claim 9 is objected to because of the following informalities: in line 2, "productare" should be replaced with --product are--. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1, 3, 5-20, 36-50, 91-101, and 103 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In this case, Applicant has added new matter to claims 1 and 97. Claims 1 and 97 include a limitation directed to a predefined product designation, said designation specifying a plurality of respectively *independent* (italics added by the examiner) products or services. The disclosure fails to provide support for the new term *independent* products or services. Beginning on page 19, first paragraph of Applicant's most recent REMARKS, Applicant defines independent products as "the products in the group are not so linked as to be the kinds of products that are generally sold together." Additionally, Applicant twice notes that computers and printers are not considered independent (see page 19, first paragraph & 18, second full paragraph). After a careful review of Applicant's original disclosure, the examiner was unable to find support for the limitation regarding *independent* products, as defined by Applicant in his remarks. On page 4, Applicant discloses that a plurality of products may be bundled, but the disclosure fails to require that the bundles are independent

Art Unit: 3627

products (products not generally sold together). On page 14, Applicant discloses the TAD (Total Accumulated Demand) system that allows various products to be purchased together. Applicant provides an example of aggregating the purchase of VCR's and TV's. Applicant's example of TV's and VCR's does not meet his own definition of independent products. Just as Applicant argues that computers and printers are sold together, TV's and VCR's are also sold together. In conclusion, Applicant's original disclosure fails to sufficiently provide support for defining a group by products that are *independent* (products not generally sold together).

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1, 5-12, 14-20, 36-42, 44-50, 91-100, and 103-106 are rejected under 35

U.S.C. 102(e) as being clearly anticipated by U.S. Patent No. 6,269,343 (Pallakoff).

In regards to independent **claim 1**, Pallakoff clearly discloses a system for facilitating aggregate purchasing, the system comprising: **(a)** a database server system (13) for maintaining at least one purchasers group (see column 1, lines 45-49), wherein said at least one purchasers group is established by an operator server (see column 2, lines 48-51) of said database server system, said at least one purchasers group characterized by a predefined designation of an aggregation of respectively different independent products or services and conditions for

Art Unit: 3627

purchasing said aggregation in accordance with said designation (see column 1, lines 56-59), said conditions including a first price and a quantity (see column 1, lines 56-59, “conditions include prices that depend on the amount of goods”), said database server (13) system being configured to interface sellers (see Figure 1, “Sellers 11a-x”) to said group such as to enable tendering by at least one seller (11) of at least said quantity to said group at a tendering price offered to said group (see column 6, lines 10-14), thereby to enable individual purchasers to benefit from aggregated buying power (see column 1, lines 45-49); and (b) a plurality of user clients (see Figure 1, “Buyers’ Client Terminals 14a-x”), being at a disposal of a plurality of users (see Figure 1, “Buyers 15”) and being capable of communicating with said database server system (13), each of said plurality of user clients (14a-x) enabling a respective user (15a-x) thereof to join said at least one purchasers group, such that a user (15) of a respective one of said plurality of user clients (14) is entitled to purchase said designated product under said conditions for purchasing said designated product upon joining said at least one purchasers group, including a best offered tendering price; **[claim 5]** configured such that said plurality of user clients (14a-x) communicate with said database server system (13) via a communications mode selected from the group consisting of dialup communications and local area network communication (see paragraph that bridges columns 2 and 3); **[claims 6, 36]** said at least one purchasers group is maintained by said database server for a predetermined period of time (see column 4, lines 7-8); **[claims 7, 37]** said user (15) can join said at least one purchasers group only during a second period of time expiring prior to said predetermined period of time (see column 4, lines 7-8); **[claims 8, 38]** a user is entitled to purchase said designed product following termination of a second time period (see column 4, lines 7-8); **[claims 9, 39]** said conditions for purchasing said

Art Unit: 3627

designated product are determined as a function of the number of members within said at least one purchasers group at the termination of said second time period (see column 11, lines 25-28); **[claims 10, 40]** said database server system (13; see column 7, lines 31-35) stores and provides on demand to each of said user clients (14a-x) information pertaining to said at least one purchasers group (for example, the number of buyers in the Buying Group; see column 6, line 60); **[claims 11, 41]** information pertaining to said at least one purchasers group includes information on said designated product and to said conditions for purchasing said designated product (see column 1, lines 56-59); **[claims 12, 42]** information pertaining to said at least one purchasers group includes information on a number of members on said at least one purchasers group (see column 6, line 60); **[claim 14]** said conditions for purchasing said designated product include said first price of said designated products, an updated price following said tendering if any terms of payment (see column 3, lines 44-65); **[claims 15, 45]** said designated product group comprises specific products from specific manufacturers (see example on column 6, line 8 that states "200 Brand A widgets"); **[claims 16, 46]** said aggregation comprises services (see column 2, line 25); **[claims 17, 47]** said designated product is characterized by a specification (23; see column 3, lines 42-43); **[claims 18, 48]** said designated product includes a plurality of specific products bundled together as a single product package (Pallakoff allows users to buy more than one item which would be purchased as a bundle, see column 11, lines 7-37); **[claims 19, 49]** each of said plurality of user clients (14a-x) is a computer operating a web browser and further wherein said database server system (13) is in communication with the World Wide Web (see paragraph that bridges columns 2 and 3); **[claims 20, 50]** each of said user clients (14a-x) is a computer operating a dedicated software program (see column 3, lines 5-10); **[claim 44]** said

Art Unit: 3627

conditions for purchasing said designated product include a maximum price of said designated products, a reduced price following tendering if any, and terms of payment (see column 3, lines 44-65); **[claim 91, 94]** said tendering is carried out in advance (see Figure 3) of setting up said purchasing group by issuing a schedule of prices for given quantity ranges (see column 3, lines 44-65); **[claims 92, 95]** said tendering is carried out at a predetermined time, provided said minimum quantity has been reached (see column 5, lines 16-37); **[claim 93, 96]** said tendering is carried out in advance of setting up said purchasing group by accepting for said group a seller offering a minimum price for said purchasing number (see column 5, lines 16-37); and **[claim 103]** said quantity is at least two (see column 5, lines 29-32).

In regards to independent **claim 97**, Pallakoff clearly discloses a system for facilitating aggregate purchasing, the system comprising a server (13), the server comprising: a database (see column 7, lines 31-34) configured to maintain at least one purchasers group, said at least one purchasers group being characterized by a predefined product designation, said designation specifying a plurality of respectively independent products or services and conditions for purchasing said designated product or services, said conditions including a first price and a minimum purchase quantity (see column 1, lines 56-59); and an interface (see Figure 2) for interactively interfacing purchasers and sellers to said database (13), said database server system (13) configured, with said interface, to interface sellers to said group such to enable tendering by at least one seller of at least said quantity to said group, said tendering comprising a tendering price offered to said group, thereby to enable individual purchasers to benefit from aggregate buying power (see column 1, lines 45-49); **[claim 98]** said tendering is carried out in advance (see Figure 3) of setting up said purchasing group by issuing a schedule of prices for given



Art Unit: 3627

quantity ranges (see column 3, lines 44-65); **[claims 99]** said tendering is carried out at a predetermined time, provided said minimum quantity has been reached (see column 5, lines 16-37); and **[claim 100]** said tendering is carried out in advance of setting up said purchasing group by accepting for said group a seller offering a minimum price for said purchasing number (see column 5, lines 16-37).

Regarding claim **104**, Pallakoff discloses a system for facilitating aggregate purchasing, the system comprising: **(a)** a database server system (13) being for maintaining at least one purchasers group (see column 1, lines 45-49), wherein said at least one purchasers group is established by an operator (see column 2, lines 48-51) of said database server system, said at least one purchasers group being characterized by a predefined designation of a product or service and conditions for purchasing said product or service in accordance with said designation, said conditions including a first price and a quantity (see column 1, lines 56-59), said database server system being configured to interface sellers to said group such as to enable tendering by a plurality of sellers (see column 2, lines 57-60) of alternative products answering to said designation to said group, thereby to enable individual purchasers to benefit from aggregated buying power (see column 1, lines 45-49); and **(b)** a plurality of user clients (14a-x), being at a disposal of a plurality of users and being capable of communicating with said database server system (13), each of said plurality of user clients (14a-x) being for enabling a respective user thereof to join said at least one purchasers group, such that a user of a respective one of said plurality of user clients is entitled to purchase said designated product under said conditions for purchasing said designated product upon joining said at least purchasers group; **[claim 105]** said

Art Unit: 3627

alternate products are defined in list (see column 3, lines 11-17); and **[claim 106]** said alternate products are defined by a specification of requirements (see column 3, lines 11-17).

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 13, 43, and 101 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pallakoff in view of U.S. Patent No. 6,418,415 (Walker et al.).

In regards to dependent **claims 13 and 43**, Pallakoff fails to expressly disclose providing on demand information to each user client on each member of said purchasers group. It is noted that Pallakoff discloses storing information on each member of the said purchasers group in a central database, but does not disclose providing the user information to each user client on demand.

Walker et al. teaches providing on demand information to each user client on each member of said purchasers group (see column 5, lines 33-35).

Art Unit: 3627

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Pallakoff with user information dissemination amongst user clients as taught by Walker et al., because providing user information on demand to each user will allow users to know their business partners and either approve or disapprove the inclusion of potential group members.

In regards to dependent **claim 101**, Pallakoff fails to expressly disclose said specification comprises a plurality of alternate products.

Walker et al. teaches providing a specification comprises a plurality of alternate products (1000; see Figure 2).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Pallakoff with alternative product option as taught by Walker et al., because offering an alternative product provides sellers with the ability to fill a user request when a substantially equal substitute product is available.

### ***Response to Arguments***

10. Applicant's arguments filed October 2, 2003 have been fully considered but they are not persuasive.

On page 16, second paragraph, Applicant notes that claims 8 and 38 have been amended. The 35 U.S.C. § 112 rejections of claims 8 and 38 are withdrawn.

On page 16, forth paragraph, Applicant argues that claim 1 has been amended to include the limitation that the product specification comprises an aggregation of respectively different products. However, claim 1 fails to mention a "product specification". The limitation

Art Unit: 3627

“specification” is found in claim 17, not claim 1. As noted by Applicant on page 18, second full paragraph, Pallakoff discusses a transaction for connected products.

On page 16, final paragraph, Applicant argues that claim 1 distinguishes over Walker. Applicant’s argument is moot because Walker is not used in the rejection of claim 1.

On page 17, first full paragraph, Applicant argues that Pallakoff only allows one seller. Pallakoff clearly discloses more than one seller (see column 2, lines 57-60). Additionally, it is noted that claim 1 merely requires “at least one seller”.

On page 17, final paragraph, Applicant argues Pallakoff does not allow the purchasers group to take the best tender offer. It is inherent that the purchasers group will review the offers by the multiple sellers and take the best tender offer. Additionally, Applicant argues that Pallakoff fails to disclose a relationship among purchasers in the purchasing group. While the Examiner is unable to find a requirement for a relationship among purchasers in claim 1, Pallakoff clearly discloses that purchasers may have a relationship (see column 1, lines 60-61, potential buyers “may or may not know each other”). Again Applicant argues that Pallakoff fails to disclose that a seller tenders against other sellers of the attention of the group. The Examiner respectfully disagrees. As set forth in column 2, lines 57-60, Pallakoff clearly allows for competition among a plurality of sellers.

On page 18, second full paragraph, Applicant argues that “[a]t no point does Pollakoff extend his idea to an aggregation of different products each having its own price and being sold together.” Applicant is arguing limitations not found in the claims. The claims fail to require an aggregation of different products each having its own price and being sold together. Additionally, Applicant argues that claim 1 requires a group of users to be empowered with

Art Unit: 3627

aggregated purchasing power over a combination of products. Claim 1 fails to require "a combination of products". On page 18, final sentence, Applicant states that Pallakoff discloses an invention that the price of the supplier drops as the number of purchasers increases.

Applicant is merely referring to an embodiment of Pallakoff. Pallakoff states that price may be static a given starting price (see column 6, lines 10-15, the quantity is 200 and the price is \$310 each, wherein the seller has the option to set lower demand thresholds).

On page 19, first paragraph, Applicant argues that claim 1 has been amended to define the products as independent. See the 35 U.S.C. § 112, first paragraph rejection above. Just as Applicant argues that computers and printers are sold together, TV's and VCR's are also sold together.

### ***Conclusion***

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jim McClellan whose telephone number is (703) 305-0212. The examiner can normally be reached on Monday-Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski, can be reached at (703) 308-5183.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

Any response to this action should be mailed to:

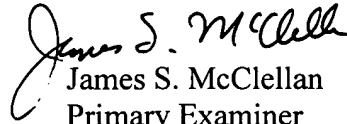
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or faxed to:

Art Unit: 3627

(703) 872-9306 (Official communications) or  
(703) 746-3516 (Informal/Draft communications).

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive,  
Arlington, VA, 7<sup>th</sup> floor receptionist.

  
James S. McClellan  
Primary Examiner  
A.U. 3627

jsm  
October 28, 2003